

LYLE and PATRICIA MAYNARD,	:	Order Docketing and Dismissing
Appellants	:	Appeal
	:	
v.	:	
	:	
ACTING ASSISTANT ABERDEEN AREA	:	Docket No. IBIA 91-45-A
DIRECTOR, INDIAN PROGRAMS,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 28, 1991

On February 8, 1991, the Board of Indian Appeals (Board) received a telefax copy of a notice of appeal filed by Lyle and Patricia Maynard (appellants), pro sese. The copy of the appeal was forwarded to the Board by the Division of Financial Assistance, Bureau of Indian Affairs (BIA), Washington, D.C., which received the notice of appeal on November 27, 1990. Appellants seek review of a September 21, 1990, decision rendered by the Acting Assistant Aberdeen Area Director, Indian Programs, BIA (Area Director), reversing a decision of the Cheyenne River Agency Superintendent, and therefore denying appellants' request for a U.S. Direct Loan in the amount of \$100,000. The Board did not receive a notice of appeal from appellants.

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed.

Based upon the copy of the notice of appeal sent to the Board by BIA, on February 22, 1991, the Board issued an order to show cause why the appeal should not be dismissed for failure to file in the proper office. Citing Kiowa Business Committee of the Kiowa Indian Tribe v. Acting Anadarko Area Director, 18 IBIA 384, recon. denied, 18 IBIA 401 (1990), McLean v. Portland Area Director, 18 IBIA 311 (1990), and Jones v. Assistant Anadarko Area Director, 17 IBIA 122 (1989), the Board noted that it has consistently dismissed appeals that are filed in the wrong office when the parties have been informed that their appeal must be filed with the Board.

On March 4 and 22, 1991, the Board received two responses from appellants to the order to show cause. Appellants state that all copies of the notice of appeal were mailed at the same time, a copy of the notice was properly sent to the Assistant Secretary - Indian Affairs, and other parties received their copies of the notice of appeal. Appellants further allege that the notice was also sent to the Board and, consequently, the Board should consider the notice to have been misdirected by the United States Postal Service within the meaning of 25 CFR 2.13(c), which provides that a late filed notice of appeal will be accepted when the misdirection was the fault of the government.

43 CFR 4.332(a) clearly provides that a notice of appeal must be filed with the Board. This information was provided to appellants in the Area Director's decision. Appellants allege that they delivered the notice of appeal to the Board, properly addressed and with prepaid postage. Such an allegation is sufficient to raise a presumption that the mail was properly delivered. That presumption, however, is rebuttable. See, e.g., Chavis v. Heckler, 577 F. Supp. 201, 204 (D.D.C. 1983). Here, the presumption is rebutted by the fact that the Board did not receive appellants' notice of appeal. The explanation offered by appellants gives the Board no grounds to construe the notice of appeal as having been properly filed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the September 21, 1990, decision of the Acting Assistant Aberdeen Area Director, Indian Programs, is dismissed. 1/

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge

1/ This decision does not prevent appellants from submitting another loan application or from continuing to work with BIA to develop a loan package that would be acceptable.